U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 November 2006

In the Matter of:
R. E. G.
Claimant

Case No. 2005-BLA-06025

v.

TWO M COAL CO.,
Employer

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
Party-in-Interest

APPEARANCES:[1]
Ron Carson and Brenda C. Yates, Representatives
Claimant
Joseph W. Bowman, Esquire and Keith R. Mason, Esquire,[2]
For the Employer

BEFORE: DANIEL F. SOLOMON
Administrative Law Judge

DECISION AND ORDER

This proceeding arises from a request for benefits under the Black Lung Benefits Act, 30 U.S.C. § 901 *et seq.* In accordance with the Act and the pertinent regulations, this case was referred to the Office of Administrative Law Judges by the Director, Office of Workers' Compensation Programs for a formal hearing requested by the Employer September 20, 2004. DX 45.

Claimant was last employed in coal mine work in the state of Virginia, the law of the United States Court of Appeals for the Fourth Circuit controls. See ***Shupe v. Director, OWCP***, 12 BLR 1-200, 1-202 (1989)(en banc). Since Claimant filed this application for benefits after January 1, 1982, Part 718 applies.

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[1] The Director, Office of Workers' Compensation Programs, was not present nor represented by counsel at the hearing.

[2] Mr. Bowman appeared at hearing, but Mr. Mason filed all pertinent documents.

In a claim filed on June 21, 1999, Judge William Terhune Miller issued a Decision and Order Denying the Claim. At that time, Claimant claimed thirty-three years of coal mine employment. The District Director found that Claimant had established 22.89 years of coal mine employment, and the Employer stipulated to that finding. Judge Miller determined that the preponderance of the evidence did not establish that Claimant has pneumoconiosis, that his pneumoconiosis arose out of his coal mine employment, or that he was totally disabled. He did not decide at that time whether the Claimant was totally disabled due to pneumoconiosis because the issue was moot.

The Claimant filed this application on September 3, 2003. DX 3. He was awarded benefits at the Director's level.

A hearing was held in Abingdon Virginia on June 29, 2006. 51 Director's Exhibits ("DX" 1-DX 51) were admitted into the record for identification. Two Claimant's Exhibits ("CX" 1- CX 2) and four Employer's exhibits ("EX" 1 – EX 4) were also admitted. Post hearing, the record remained open for briefs which were submitted by both the Claimant and Employer.

The Claimant testified that he is now 61 years of age and has a seventh grade education. He was a "working foreman", and did labor jobs and roof bolted. TR 11-13. He had to lift bundles of metal that weighted from 50 to 75 pounds. The coal that he worked in was too low to stand erectly and often he had to crawl on his hands and knees. Id. 14 - 15. The entire work history was done in underground mines. Id.

The claimant stopped working in 1996 to a back injury. Id. 16, 20. He had urgery for the back in 1998. Id. 21. He also had quadruple bypass heart surgery. Id. 22.

Dr. Ehtesham is now the treating physician, and he has prescribed medication to help with breathing difficulties. Id. 17 -18.

Although the Claimant smoked at one time, he testified that he quit in 2004, when he had a heart attack. Id. 22. However on close cross examination he vacillated on that testimony and admitted that he tried an occasional cigarette since then. Id. 23.

APPLICABLE STANDARDS

Because the Claimant filed this application for benefits after March 31, 1980, the regulations set forth at part 718 apply. ***Saginaw Mining Co. v. Ferda***, 879 F.2d 198, 204, 12 B.L.R. 2-376 (6th Cir. 1989). This claim is governed by the law of the United States Court of Appeals for the Fourth Circuit, because the Claimant was last employed in the coal industry in the Commonwealth of Virginia within the territorial jurisdiction of that court. ***Shupe v. Director*, OWCP**, 12 B.L.R. 1-200 (1989) (en banc). (DX 5)

This case represents an initial claim for benefits. To receive black lung disability benefits under the Act, a miner must prove that (1) he suffers from pneumoconiosis, (2) the pneumoconiosis arose out of coal mine employment, (3) he is totally disabled, and (4) his total disability is caused by pneumoconiosis. ***Gee v. W.G. Moore and Sons***, 9 B.L.R. 1-4 (1986) (en banc); ***Baumgartner v. Director***, OWCP, 9 B.L.R. 1-65 (1986) (en banc). ***See Mullins Coal Co., Inc. of Virginia v. Director***, OWCP, 484 U.S. 135, 141, 11 B.L.R. 2-1 (1987). The failure to prove any requisite element precludes a finding of entitlement. ***Anderson v. Valley Camp of Utah, Inc.***, 12 B.L.R. 1-111 (1989); ***Perry v. Director***, OWCP, 9 B.L.R. 1-1 (1986) 1-1 (1986) (en banc).

ISSUES

1. Whether the claim was timely filed.
2. Whether the miner suffers from pneumoconiois.
3. If so, whether the miner's pneumoconiosis arose out of coal mine employment.
4. Whether the miner is totally disabled.
5. If so, whether the miner's disability is due to pneumoconiosis.

STIPULATIONS AND WITHDRAWAL OF ISSUES

1. During the hearing, the parties agreed that the miner worked for at least 22 years in coal mine employment and the Claimant is a "miner" as defined by the Act. Transcript ("TR" 6).
2. The Employer withdrew contest to the responsible operator issue. TR 7.
3. The Claimant has one dependant, his wife. TR 7.

I have reviewed all of the evidence in the record and I accept the stipulations as they are consistent with the evidence.

BURDEN OF PROOF

"Burden of proof," as used in this setting and under the Administrative Procedure Act[3] is that "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." "Burden of proof" means burden of persuasion, not merely burden of production. 5 U.S.C. § 556(d).[4] The drafters of the APA used the term "burden of proof" to mean the burden of persuasion. ***Director, OWCP, Department of labor v. Greenwich Collieries [Ondecko]***, 512 U.S. 267, 18 B.L.R. 2A-1 (1994).[5]

A Claimant has the general burden of establishing entitlement and the initial burden of going forward with the evidence. The obligation is to persuade the trier of fact of the truth of a proposition, not simply the burden of production; the obligation to come forward with evidence to support a claim. Therefore, the Claimant cannot rely on the Director to gather evidence. The Claimant bears the risk of non-persuasion if the evidence is found insufficient to establish a crucial element. ***Oggero v. Director, OWCP***, 7 B.L.R. 1-860 (1985).

TIMELINESS

30 U.S.C. § 932(f), provides that "[a]ny claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later". During the hearing, the Employer maintained that timeliness was an issue. Under 20 C.F.R. § 725.308 (c) there shall be a rebuttable presumption that every claim for benefits is timely filed. I directed the

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[3] 33 U.S.C. § 919(d) ("[N]otwithstanding any other provisions of this chapter, ant hearing held under this chapter shall be conducted in accordance with [the APA]; 5 U.S.C. § 554(c)(2). Longshore and Harbors Workers' Compensation Act ("LHWCA") 33 U.S.C. § 901-950, is incorporated by reference into Part C of the Black Lung Act pursuant to 30 U.S.C. § 932(a).

[4] The Tenth and Eleventh Circuits held that the burden of persuasion is greater than the burden of production, ***Alabama By-Products Corp. v. Killingsworth***, 733 F.2d 1511, 6 B.L.R. 2-59 (11th Cir. 1984); ***Kaiser Steel Corp. v. Director***, OWCP [Sainz], 748 F.2d 1426, 7 B.L.R. 2-84 (10th Cir. 1984). These cases arose in the context where an interim presumption is triggered, and the burden of proof shifted from a Claimant to an employer/carrier.

[5] Also known as the risk of non-persuasion, *see* 9 J. Wigmore, Evidence § 2486 (J. Chadbourn rev. 1981).

Employer to advise me in detail what was the basis for any objection. I have searched the record and do not find any reason to overcome the presumption. I note that this is a subsequent claim and it falls within the jurisdiction of the Fourth Circuit Court of Appeals. The Court and the Board have held that the statute of limitations applies only to the first claim filed, ***Andryka v. Rochester & Pittsburgh Coal Co***., 14 B.L.R. 1-34 (1990).

SUBSEQUENT CLAIMS

After the expiration of one year from the denial of benefits, the submission of additional material or another claim is considered a subsequent claim and adjudicated under the provisions of 20 C.F.R. § 725.309(d). That subsequent claim will be denied unless the claimant can demonstrate that at least one of the conditions of entitlement upon which the prior claim was denied (applicable condition of entitlement) has changed and is now present. 20 C.F.R. § 725.309(d)(3). If a claimant does demonstrate a change in one of the applicable conditions of entitlement, then generally findings made in the prior claim(s) are not binding on the parties. 20 C.F.R. § 725.309(d)(4). Consequently, the relevant inquiry in a subsequent claim is whether evidence developed after the prior adjudication supports a finding of a previously denied condition of entitlement.

To receive black lung disability benefits under the Act, a claimant must prove four basic conditions, or elements, related to his physical condition. First, the miner must establish the presence of pneumoconiosis.[6] Second, if a determination has been made that a miner has pneumoconiosis, it must be determined whether the miner's pneumoconiosis arose, at least in part, out of coal mine employment.[7] Third, the miner has to demonstrate he is totally disabled. And fourth, the miner must prove the total disability is due to pneumoconiosis.

Based on those four principle conditions of entitlement, the adjudication of a subsequent claim involves the identification of the condition(s) of entitlement a claimant failed to prove in the prior claim and then an evaluation of whether, through newly developed evidence, a claimant is able to now prove the condition(s) of entitlement. The most recent prior claim was denied in because he failed to establish the presence of pneumoconiosis, he was not totally disabled due to pneumoconiosis; and that there was no causal relationship between pneumoconiosis and coal mine employment. (DX 1).

MEDICAL EVIDENCE SUMMARY

X-rays

Exhibit No.	Physician	BCR/BR	Date of film	Reading
DX 10	Baker	B	12/1/03	1,0[8]
DX 16	Castle	B	"	0,0
DX 15	Pathak	B	5/15/03	1,1
DX 15	Alexander	B/BCR	3/3/04	1,1
CX1	Alexander	B/BCR	8/5/05	1,0
EX 2	Fino	B	8/8/05	0,0

[6] 20 C.F.R. § 718.202.

[7] 20 C.F.R. § 718.203(a).

[8] I note that Dr. Barrett reviewed the film quality of this x-ray for the Department of Labor, but the parties did not identify it for evaluation.

Pulmonary function studies

Exhibit No.	Physician	Date of study	Tracings present?	Flow-volume loop?	Broncho-dilator?	FEV1	FVC/ MVV	Coop. and Comp. Noted?
DX 10	Baker	12/01/03	yes	yes	no	1.91		
DX 15	Narayanan	3/10/04	Yes	Yes	No	1.59	3.36/ 62.5	good
DX 15	Smiddy	9/16/03	Yes	Yes	no	1.73		good
EX 3	Fino	8/4/05			no	1.18	3.47	good[9]

Blood gas studies

Exhibit No.	Physician	Date of Study	Altitude	Resting (R) Exercise (E)	PCO2	PO2	Comments
DX 10	Baker	12/01/03	0-2999	R	36.0	76	
EX 3	Fino	8/4/05			78	41	

Medical Reports

Dr. Glen Baker

Dr. Baker performed the OWCP examination. The Claimant presented a history of heart disease and a heart attack, wheezing, coughing and production of sputum on a daily basis. He alleges shortness of breath at night. He uses an inhaler. The Claimant is a smoker. He also has high blood pressure and heart disease. Dr. Baker determined that the Claimant has simple pneumoconiosis, bronchitis, "moderate" chronic obstructive pulmonary disease (COPD), and mild resting hypoxemia. Based on the x-ray and spirometry and blood gas testing, he determined that the Claimant is totally disabled from pneumoconiosis. DX 10. [10]

Dr. Joseph Smiddy

In a report dated September 16, 2003, Dr. Smiddy examined the Claimant on referral from his treating physician, who provided records and the x-ray dated May 15, 2003. After the examination, Dr. Smiddy diagnosed bronchitis, nicotine addiction, chronic obstructive pulmonary disease and pneumoconiosis.

The Claimant was advised to stop smoking. Based on finding "severe" pulmonary function it "would be of significant degree to prevent this patient from doing his former job and he is therefore 100% totally and permanently disabled significantly by his coal workers pneumoconiosis which is of sufficient degree to preclude his activities to daily living and/or

[9] Although the Employer asked me to evaluate a record submitted by Dr. Castle from the prior file at hearing, he was to have provided an accurate reference to it. TR 34. It was not provided in the pre-hearing evidence summary and was not provided at hearing. A review of Employer's brief shows that the Employer does not rely on the spirometry testing, and therefore, I do not include it for evaluation under 20 CFR §725.414. I note that Dr. Castle's record review is contained in DX 16. A mild obstruction was noted in the 2000 examination without significant change after bronchodilator therapy.

[10] The results of testing were evaluated by Dr. John A. Michos, a board certified internist, who found them acceptable. DX 12, DX 13. However, this evidence was not designated for evaluation, and I choose not to use it.

employment and the patient is recognized to have smoking and COPD as additional factors." DX 15.

Dr. Shahab M. Ehtesham

According to the report, the Claimant has chronic lung disease, which was cause by his coal mine employment. He had 23 years of coal mine employment. The miner has a moderate obstructive ventilatory defect and a symptom complex of bronchitis. It does not occur on a daily basis, but he does have symptoms of cough, sputum production, wheezing and shortness of breath. "This would be legal pneumoconiosis." Although he noted a smoking history, "We cannot rule out that there has been a significant contribution, however, from his coal dust exposure." EX 2.

Dr. Castle

Dr. Castle provided a record review, although he had examined the Claimant in July, 2000 and issued a subsequent report on May 10, 2004, he recanted his former opinion as to total disability. "It is my opinion that based upon the current studies, he is permanently and totally disabled as a result of tobacco smoke induced chronic airway obstruction."

However, despite have been provided two x-ray readings diagnosing pneumoconiosis, he maintains that there is no evidence to establish pneumoconiosis. DX 18.

Dr. Gregory Fino

Dr. Fino examined the Claimant on August 4, 2005. He took an x-ray and performed spirometry and blood gas studies. Although he found that the Claimant is totally disabled from a respiratory standpoint, due to chronic obstructive disease with both emphysema and chronic obstructive bronchitis with some reversibility, he did not find any evidence that it was from pneumoconiosis, but was from smoking tobacco. EX 1.

"Other" Medical Evidence

Although the Claimant designated the report of Kellie Brooks in DX 15 for evaluation, I find that she actually submitted a report and it is outside the limitations of evidence rules. However, although there are other treatment records, neither party identified them or referenced them in the briefs and therefore I will not discuss them.

FINDINGS OF FACT

Total Disability

To receive black lung disability benefits under the Act, a claimant must establish total disability due to a respiratory impairment or pulmonary disease. If a coal miner suffers from complicated pneumoconiosis, there is an irrebuttable presumption of total disability. 20 C.F.R. §§ 718.204(b) and 718.304. If that presumption does not apply, then according to the provisions of 20 C.F.R. §§ 718.204(b)(1) and (2), in the absence of contrary evidence, total disability in a living miner's claim may be established by four methods: (i) pulmonary function tests; (ii) arterial blood-gas tests; (iii) a showing of cor pulmonale with right-sided, congestive heart failure; or (iv) a reasoned medical opinion demonstrating a coal miner, due to his pulmonary condition, is unable to return to his usual coal mine employment or engage in similar employment in the immediate area requiring similar skills.

The record does not contain sufficient evidence that Claimant has complicated pneumoconiosis and there is no evidence of cor pulmonale with right sided congestive heart failure. As a result, the Claimant must demonstrate total respiratory or pulmonary disability through pulmonary function tests, arterial blood-gas tests, or medical opinion.

Although the Claimant had failed to establish total disability from a respiratory impairment in the prior record, I now accept that he has in the current record. Although this is disputed by the Employer, all of the reviewing physicians concluded that Claimant does not have the pulmonary capacity to perform his usual coal mining work or comparable work requiring similar exertion.

I credit the opinions to that extent and find that the evidence is overwhelming.

Therefore, I find that the Claimant has established one of the criteria under 20 CFR § 725.309, total disability.

Pneumoconiosis

Existence of Pneumoconiosis

Pneumoconiosis is defined as a chronic dust disease arising out of coal mine employment.[11] The regulatory definitions include both clinical (medical) pneumoconiosis, defined as diseases recognized by the medical community as pneumoconiosis, and legal pneumoconiosis, defined as any chronic lung disease. . .arising out of coal mine employment.[12] The regulation further indicates that a lung disease arising out of coal mine employment includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. § 718.201(b). As several courts have noted, the legal definition of pneumoconiosis is much broader than medical pneumoconiosis. ***Kline v. Director, OWCP***, 877 F.2d 1175 (3d Cir. 1989).

A living miner can demonstrate the presence of pneumoconiosis by: (1) chest x-rays interpreted as positive for the disease (§ 718.202(a)(1)); or (2) biopsy report (§ 718.202(a)(2)); or the presumptions described in Sections 718.304, 718.305, or 718.306, if found to be applicable; or (4) a reasoned medical opinion which concluded the disease is present, if the opinion is based on objective medical evidence such as blood-gas studies, pulmonary function tests, physical examinations, and medical and work histories. (§ 718.202(a)(4)).

X-ray Evidence

The record I consider under the rules for limitations on evidence involves six readings of five x-rays. The prior record contains 32 readings, but I choose not to rely upon them. The Claimant relies on the four readings, two by board certified B readers. The Employer relies on two readings by B readers.

Biopsy and Presumption

Claimant has not established pneumoconiosis by the provisions of subsection 718.202(a)(2) since no biopsy evidence has been submitted into evidence.

Medical Reports

20 C.F.R. § 718.202(a)(4) sets forth:

> A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment, notwithstanding a negative x-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in Section

[11] 20 C.F.R § 718.201(a).

[12] 20 C.F.R. § 718.201(a)(1) and (2) (emphasis added).

718.201. Any such finding shall be based on objective medical evidence such as blood-gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding shall be supported by a reasoned medical opinion.

The Claimant offers medical reports by Drs. Baker, Smiddy and Ehtesham, all of whom diagnose coal workers' pneumoconiosis. The Employer relies on the reports of Drs. Fino and Castle who do not.

The weight I must attribute to the x-rays submitted for evaluation with the current application are in dispute. I note that of the current readings, only two are by a dually qualified board certified radiologist B reader, Dr. Alexander. "[W]here two or more X-ray reports are in conflict…consideration shall be given to the radiological qualifications of the physicians interpreting such X-rays." 718.202(a)(1). I am "not required to defer to…radiological experience or…status as a professor of radiology." ***Dempsey v. Sewell Coal Co***., 23 BLR 1-47 (2004).

I note that neither Dr. Castle or Dr. Fino accept that the x-rays are positive for pneumoconiosis.

Rationale

I have reviewed all of the evidence relating to pneumoconiosis together, and I find that the Claimant has now also established pneumoconiosis. The presence of pneumoconiosis is based on weighing all types of evidence under 20 C.F.R. § 718.202 together. ***Island Creek Coal Co. v. Compton***, 211 F.3d 203 (4th Cir. 2000).

After a review of all of the evidence, I find that the x-ray evidence establishes the existence of pneumoconiosis based on the opinions of the Dr. Alexander, the better qualified reader. I also note that a majority of the readings are positive. I have considered all of the medical reports and find that the reports of Dr. Castle and Dr. Fino must be discounted because of undue reliance on the negative readings flaw their logic.

I note that the opinion rendered by Dr. Baker and to some lesser extent Dr. Smiddy, are based on observations of the Claimant and that the symptoms are consistent with their opinions. I also find that they are well documented and well reasoned.

CAUSATION

A miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment. 20 CFR 718.203(b). I have discounted the opinions of Drs Castle and Fino, who do not accept a diagnosis of pneumoconiosis, which is contrary to the full weight of the evidence. ***Scott v. Mason Coal Co***., 289 F.3d 263 (4th Cir. 2002). The record establishes 22 years of coal mine employment. I credit the opinions of Drs. Baker, Smiddy and Ehtesham on this point. Therefore, I find that the miner's pneumoconiosis arose at least in part out of coal mine employment.

TOTAL DISABILITY DUE TO PNEUMOCONIOSIS

Claimant needs to establish that pneumoconiosis is a "substantially contributing cause" to his disability. A "substantially contributing cause" is one which has a material adverse effect on the miner's respiratory or pulmonary condition, or one which materially worsens another respiratory or pulmonary impairment unrelated to coal mine employment. 20 C.F.R.

§718.204(c)(1). The Benefits Review Board has held that §718.204 places the burden on the claimant to establish total disability due to pneumoconiosis by a preponderance of the evidence. ***Baumgardner v. Director, OWCP***, 11 B.L.R. 1-135 (1986).

I credit Drs. Baker's, Smiddy's and Ehtesham's reports that establish causation. Again, I discount Drs. Fino's and Castle's opinions as poorly reasoned, as their opinions are contrary to my finding on pneumoconiosis. ***Toler v. Eastern Assoc. Coal Co***., 43 F.3d 109 (4th Cir. 1995),

The Claimant's physicians note that both smoking and pneumoconiosis significantly contributed to total disability. Based on reasons more fully set forth above in the discussion of pneumoconiosis and total disability, I accept this premise.

Therefore, I find that pneumoconiosis was a substantial contributing cause to the miner's disability. 20 C.F.R. §718.204(c)(1). *See also* ***Hobbs v. Clinchfield Coal Co.***, 917 F.2d 790, 792 (4th Cir. 1990); ***Robinson v. Pickands Mather & Co.***, 914 F.2d 35, 38 (4th Cir. 1990).

ENTITLEMENT

I find that Claimant has established entitlement to benefits. Pursuant to 20 CFR §725.503, benefits are payable as of the month of onset of total disability and if the evidence does not establish the month of onset, benefits are payable beginning with the month during which the claim was filed.

The Claimant was evaluated by Dr. Baker in December, 2003, DX 10. Dr. Pathak's x-ray reading, which I credit, was read May 15, 2003. DX 15. I accept Dr. Baker's determination that the Claimant was totally disabled due to pneumoconiosis at that time, and it is reasonable to expect that he had the same symptoms when he applied September 8, 2003.

Therefore, I find that benefits are payable as of the month during which Claimant filed the claim, September, 2003.

Attorney's Fees

No award of attorney's fees for services to the Claimant is made herein because no application has been received from counsel. A period of 30 days is hereby allowed for the Claimant's counsel to submit an application. ***Bankes v. Director***, 8 BLR 2-l (l985). The application must conform to 20 C.F.R. 725.365 and 725.366, which set forth the criteria on which the request will be considered. The application must be accompanied by a service sheet showing that service has been made upon all parties, including the Claimant and Solicitor as counsel for the Director. Parties so served shall have 10 days following receipt of any such application within which to file their objections. Counsel is forbidden by law to charge the Claimant any fee in the absence of the approval of such application.

ORDER

The claim for benefits filed by **R.E.G.** is hereby **GRANTED**. Augmentation benefits for one dependent is also granted.

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DANIEL F. SOLOMON
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with the decision, you may file an appeal with the Benefits Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days from the date on which the administrative law judge's decision is filed with the district director's office. See 20 C.F.R. §§ 725.478 and 725.479. The address of the Board is: Benefits Review Board, U.S. Department of Labor, P.O. Box 37601, Washington, DC 20013-7601. Your appeal is considered filed on the date it is received in the Office of the Clerk of the Board, unless the appeal is sent by mail and the Board determines that the U.S. Postal Service postmark, or other reliable evidence establishing the mailing date, may be used. See 20 C.F.R. § 802.207. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

After receipt of an appeal, the Board will issue a notice to all parties acknowledging receipt of the appeal and advising them as to any further action needed.

At the time you file an appeal with the Board, you must also send a copy of the appeal letter to Allen Feldman, Associate Solicitor, Black Lung and Longshore Legal Services, U.S. Department of Labor, 200 Constitution Ave., NW, Room N-2117, Washington, DC 20210. See 20 C.F.R. § 725.481.

If an appeal is not timely filed with the Board, the decision becomes the final order of the Secretary of Labor pursuant to 20 C.F.R. § 725.479(a).